

To: Shimada, Kenshu[KSHIMADA@depaul.edu]
Cc: Santucci, Vincent[vincent_santucci@nps.gov]; Polly, P. David[pdpolly@indiana.edu]; Randall Irmis[irmis@umnh.utah.edu]
From: Foss, Scott
Sent: 2017-05-09T10:31:03-04:00
Importance: Normal
Subject: Re: Question
Received: 2017-05-09T10:31:33-04:00

Hi Kenshu,

I do not know what people are actually conducting the review except that it is an executive order from the President to the Secretary of the Interior, so I think those two offices would be appropriate for communication. I do not know the role of Congress since it is an executive order to an executive secretary, so Congress isn't really a part of this. However, congressional delegations from Alaska, Maine, and Utah were invited to the signing. That's everything I know.

My advice for being heard is to respond to the FR notice during the public comment period that will begin on May 12. Having participated on the other end of FR notices I know that someone will be tasked with reading and summarizing all comments that are received, so make your comments as direct and organized as possible. Keep them constructive, since the person summarizing the comments needs to understand what you are saying and communicate it onward. State whether you are representing yourself or an organization. Hopefully all comments will be made public, so you can review what others have submitted.

This is from the DOI press release:

Comments may be submitted online after May 12 at <http://www.regulations.gov> by entering "DOI-2017-0002" in the Search bar and clicking "Search," or by mail to Monument Review, MS-1530, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240.

Scott E. Foss, PhD
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sfoss@blm.gov, 202-912-7253

On Mon, May 8, 2017 at 11:52 PM, Shimada, Kenshu <KSHIMADA@depaul.edu> wrote:

Thanks for the wealth of info Scott! Yes, indeed national monuments are unique and somewhat 'mysterious' in their existence. SVP and PS are considering to ask their members to send letters to the U.S. government to comment on the paleo resources on the named national monuments, but do you know all the relevant addressees including their titles and postal and e mail addresses? Besides those in DOI, are there any senators or other decision makers we should send our letters to? I presume also to the POTUS? Thanks!
Kenshu

From: Foss, Scott [sfoss@blm.gov]
Sent: Monday, May 08, 2017 12:13 PM
To: Shimada, Kenshu
Cc: Santucci, Vincent; Polly, P. David; Randall Irmis
Subject: Re: Question

Hi Kenshu,

The list of monuments under review was released by the department last week:

<https://www.doi.gov/pressreleases/interior-department-releases-list-monuments-under-review-announces-first-ever-formal>

The Executive Order **(1)** states that the review should be limited to designations and expansions that have been made since January 1, 1996. Your comments should probably be limited to those monuments, since no other monuments are subject to review at this time.

And here is a list of all national monuments that were designated under the authority of the Antiquities Act. Keep in mind that many of these have since been recognized or expanded by Congress:

<https://www.doi.gov/pressreleases/interior-department-releases-list-monuments-under-review-announces-first-ever-formal>

If you are discussing all monuments that were established under the authority of the Antiquities Act, then be careful to omit ones that have been subsequently authorized by Congress. For example, Petrified Forest "National Monument" was established in 1906 by Theodore Roosevelt under the authority of the Antiquities Act, but Congress subsequently re-authorized the designation in 1958 by expanding the boundaries and elevating the status of the unit from a national monument to a national park. Therefore, Petrified Forest National Park should not be subject to a review of the Antiquities Act.

There is a more interesting discussion that can and should be had, which is, "what IS a national monument?"

The authority to buy, sell, and make rules on federal lands rests with Congress **(2)**. However, Congress routinely delegates authority to the executive to make rules **(3)**. In the case of the Antiquities Act, Congress delegated non-exclusive authority to the the President to designate national monuments **(4)**.

The question we should be asking is what is a national monument (NM), and how is that quantitatively different from a national park (NP) or a national conservation area (NCA)? Vince and I can explain the qualitative differences **(5)**, but nobody can quantify the actual difference between the designations, because a description of what each designation "looks like" has not been legislated or codified.

In 1964, Congress passed the Wilderness Act, which contains a description of "wilderness character" **(6)**. An area must possess and maintain these quantifiable wilderness characteristics in order to be designated wilderness. There are no such quantifiable metrics for a NM, NP, or NCA. The NPS Organic Act of 1916 **(7)** solved this problem by establishing what a National Park Service (NPS) unit looks like, and thus the minimal quantifiable metrics for what a NM or NP must look like **(8)**. However, these quantifiable metrics only apply to designations that are managed by the NPS. National monuments that are manged by the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), the U.S.D.A. Forest service, the Department of Energy (DOE), and by the National Oceanographic and Atmospheric Administration (NOAA) are not subject to the Organic Act

of 1916 and so what the units look like is guided by the language of each unit's enabling legislation or presidential proclamation. Unfortunately, many of these authorizing documents are frighteningly vague.

Therefore, any discussion about national monument designations should also discuss the question of what a national monument should look like. As is currently the case, bureaus are forced to make this determination in the course of managing lands that are assigned to them by Congress.

And a final thought, discussions about the veracity and status of national monuments should include Congress, with the help of the executive, and with the help of knowledgeable partners and stakeholders; all stakeholders.

I hope this is helpful,
S

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- (1) Presidential Order 13792 - Review of designations under the Antiquities Act. <https://www.whitehouse.gov/the-press-office/2017/04/26/presidential-executive-order-review-designations-under-antiquities-act>
- (2) U.S. Constitution - Article IV, Section 3, Clause 2 - *The Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States...*
- (3) Such as PRPA, Section 6310 - *As soon as practical after the date of enactment of this Act, the Secretary shall issue such regulations as are appropriate to carry out this subtitle, providing opportunities for public notice and comment.*
- (4) Antiquities Act of 1906, Section 2 - *The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments...*
- (5) - Monuments generally have at least one nationally or internationally significant value that warrants unimpaired preservation for present and future generations, whereas national parks generally have multiple nationally or internationally significant values that warrant unimpaired preservation for present and future generations;
 - NCA's only exist on lands managed by BLM;
 - Congress can authorize monuments, parks, and NCA's, whereas the President can only

authorize monuments.

(6) Wilderness Act of 1964, Section 2 - *A wilderness...*

- 1. generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable;*
- 2. has outstanding opportunities for solitude or a primitive and unconfined type of recreation;*
- 3. has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and*
- 4. may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.*

(7) <https://www.nps.gov/grba/learn/management/organic-act-of-1916.htm>

(8) NPS Organic Act of 1916 - *...to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.*

On Sat, May 6, 2017 at 12:48 PM, Shimada, Kenshu <KSHIMADA@depaul.edu> wrote:

Hi Scott and Vince,

I just received the message below from David, and I would like to know the known paleontological recourses (particularly vertebrate fossils), if any, from each of the named national monuments other than the Bears Ears and Grand Staircase-Escalante. While SVP is very familiar with the scientific importance of the Bears Ears and Grand Staircase-Escalante, I'm here requesting for known paleontological facts on other national monuments if DOI has any record or publications. Thanks!

Kenshu

-----Original Message-----

From: Polly, P. David [<mailto:pdpolly@indiana.edu>]

Sent: Saturday, May 06, 2017 11:24 AM

To: Randall Irmis

Cc: Shimada, Kenshu

>>>press release from DOI

>>><https://www.doi.gov/pressreleases/interior-department-releases-list-monuments-under-review-announces-first-ever-formal>